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HOUSE BILL 1269

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Al Park

AN ACT

RELATING TO ELECTIONS; ALLOWING A POLITICAL PARTY TO NOMINATE ANY QUALIFIED CANDIDATE TO RUN UNDER ITS PARTY NAME IN AN ELECTION; ALLOWING A CANDIDATE'S NAME TO APPEAR MORE THAN ONCE ON A BALLOT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1993; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-4-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 72, as amended by Laws 1993, Chapter 314, Section 15 and also by Laws 1993, Chapter 316, Section 15) is amended to read:

"1-4-16. REGISTRATION--WHEN PARTY AFFILIATION SHALL NOT BE MADE.--~~[A.]~~ No designation of party affiliation shall be made or changed on an existing certificate of registration at .167198.1

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1 any time during which registration is closed.

2 ~~[B. Every person appearing as a candidate on the~~
3 ~~primary or general election ballot shall be a candidate only~~
4 ~~under the name and party affiliation designation appearing on~~
5 ~~his existing certificate of registration on file in the county~~
6 ~~clerk's office on the date of the governor's proclamation of a~~
7 ~~primary election.]"~~

8 Section 2. Section 1-8-2 NMSA 1978 (being Laws 1969,
9 Chapter 240, Section 152, as amended) is amended to read:

10 "1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION-
11 DESIGNATED NOMINEES.--

12 A. If the rules ~~[and regulations]~~ of a minor
13 political party require nomination by political convention:

14 (1) the ~~[chairman]~~ chair and secretary of the
15 state political convention shall certify to the secretary of
16 state the names of their party's nominees for United States
17 senator, United States representative, all elective state
18 offices, legislative offices elected from multicounty
19 districts, the public regulation commission, all elective
20 judicial officers in the judicial department and all offices
21 representing a district composed of more than one county; and

22 (2) the ~~[chairman]~~ chair and secretary of the
23 county political convention shall certify to the county clerk
24 the names of their party's nominees for elected county offices
25 and for legislative offices elected from a district located

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1 wholly within one county or that is composed of only one
2 county.

3 B. The names certified to the secretary of state
4 shall be filed on the second Tuesday in July in the year of the
5 general election and shall be accompanied by a petition
6 containing a list of signatures and addresses of voters
7 totaling not less than one percent of the total number of votes
8 cast at the last preceding general election for the office of
9 governor or president of the United States, as the case may be:

10 (1) in the state for statewide offices; and

11 (2) in the district for offices other than
12 statewide offices.

13 The petition shall contain a statement that the voters
14 signing the petition are residents of the state, district,
15 county or area to be represented by the office for which the
16 person being nominated is a candidate.

17 C. The names certified to the county clerk shall be
18 filed on the second Tuesday in July in the year of the general
19 election and shall be accompanied by a petition containing a
20 list of signatures and addresses of voters totaling not less
21 than one percent of the total number of votes cast at the last
22 preceding general election for the office of governor or
23 president of the United States, as the case may be:

24 (1) in the county for countywide offices; and

25 (2) in the district for offices other than

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1 countywide offices.

2 The petition shall contain a statement that the voters
3 signing the petition are residents of the state, district,
4 county or area to be represented by the office for which the
5 person being nominated is a candidate.

6 D. Persons certified as nominees shall be members
7 of that political party before the day the governor issues the
8 primary election proclamation; except a person may be certified
9 as the nominee of a party without being a member of that party
10 before the day the governor issues the primary election
11 proclamation if:

12 (1) the state committee of the party has
13 authorized the nomination of that person by a majority vote;
14 and

15 (2) the rules of the party, if any, do not
16 prohibit the acceptance of nominations.

17 E. No voter shall sign any petition prescribed by
18 this section for more persons than the number of minor
19 political party candidates necessary to fill the office at the
20 next ensuing general election."

21 Section 3. Section 1-8-8 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 158, as amended) is amended to read:

23 "1-8-8. VACANCY ON GENERAL ELECTION BALLOT--OCCURRING
24 AFTER PRIMARY.--

25 A. If after a primary election a vacancy occurs,

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1 for any cause, in the list of nominees of a qualified political
2 party for any public office to be filled in the general
3 election, or a vacancy occurs because of the resignation or
4 death of a person holding a public office not included in the
5 governor's proclamation and which office is required by law to
6 be filled at the next succeeding general election, the vacancy
7 on the general election ballot may be filled by:

8 (1) the central committee of the state
9 political party filing the name of its nominee for the office
10 with the proper filing officer when [~~such~~] the office is a
11 federal, state, district or multicounty legislative district
12 office; and

13 (2) the central committee of the county
14 political party filing the name of its nominee for the office
15 with the proper filing officer when [~~such~~] the office is a
16 magistrate, county or a legislative district office where the
17 district is entirely within the boundaries of a single county.

18 B. [~~Appointments~~] An appointment made pursuant to
19 Subsection A of this section shall [~~be of the same party~~
20 ~~affiliation as the original nominee and~~] reside in the district
21 from which [~~he~~] the nominee will be elected as shown by [~~his~~]
22 the nominee's certificate of registration on file in the county
23 clerk's office before the day of the governor's primary
24 election proclamation.

25 C. Appointments to fill vacancies in the list of a

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1 political party's nominees shall be made and filed at least
2 fifty-six days prior to the general election. If the vacancy
3 is caused by the death of a nominee, the central committee may
4 in like manner file the name of its nominee to fill the vacancy
5 up until five days prior to the general election.

6 D. When the name of a nominee is filed as provided
7 in this section, [~~such~~] the name shall be placed on the general
8 election ballot as the political party's candidate for that
9 office. In the case of a nominee appointed after the general
10 election ballots are printed, [~~such~~] the name shall be placed
11 on the ballot by pasting the printed name of the nominee over
12 the name of the candidate whose vacancy [~~he~~] the nominee fills
13 on the general election ballot."

14 Section 4. Section 1-8-18 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 167, as amended) is amended to read:

16 "1-8-18. PRIMARY ELECTION LAW--WHO MAY BECOME A
17 CANDIDATE.--

18 A. [~~No~~] A person shall not become a candidate for
19 nomination by a political party or have [~~his~~] the person's name
20 printed on the primary election ballot unless [~~his~~] the
21 person's record of voter registration shows

22 [~~(1) his affiliation with that political party~~
23 ~~on the date of the governor's proclamation for the primary~~
24 ~~election; and~~

25 ~~(2) his]~~ the person's residence in the

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1 district of the office for which [~~he~~] the person is a candidate
2 on the date of the governor's proclamation for the primary
3 election or in the case of a person seeking the office of
4 United States senator or United States representative, [~~his~~]
5 residence within New Mexico on the date of the governor's
6 proclamation for the primary election.

7 B. [~~Any~~] A voter may challenge the candidacy of
8 [~~any~~] a person seeking nomination by a political party for the
9 reason that [~~he~~] the person does not meet the requirements of
10 Subsection A of this section by filing a petition in the
11 district court within ten days after the last day for filing a
12 declaration of candidacy or a statement of candidacy for
13 convention designation. The district court shall hear and
14 render a decision on the matter within ten days after the
15 filing of the petition. The decision of the district court may
16 be appealed to the supreme court within five days after the
17 decision is rendered. The supreme court shall hear and render
18 a decision on the appeal forthwith."

19 Section 5. Section 1-8-21.1 NMSA 1978 (being Laws 1993,
20 Chapter 55, Section 11) is amended to read:

21 "1-8-21.1. DESIGNATION OF CANDIDATES BY CONVENTION.--

22 A. State conventions of major political parties may
23 designate candidates for nomination to statewide office or the
24 office of United States representative.

25 B. No state convention for designating candidates

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1 shall be held later than the third Sunday in March preceding
2 the primary election, and delegates to the convention shall be
3 elected according to state party rules filed in the office of
4 the secretary of state.

5 C. ~~[The]~~ A state convention shall not take only one
6 ballot upon candidates for each office to be filled. Every
7 candidate receiving twenty percent or more of the votes of the
8 duly elected delegates to the convention for the office to be
9 voted upon at the ensuing primary election shall be certified
10 to the secretary of state as a convention-designated nominee
11 for that office by the political party. Certification shall
12 take place no later than 5:00 p.m. on the first Tuesday
13 succeeding the state convention.

14 D. The certificate of designation submitted to the
15 secretary of state shall state the name of the office for which
16 each person is a candidate, ~~[his]~~ the name and address and the
17 name of the political party that the candidate represents ~~[and~~
18 ~~shall certify that the candidate has been a member of that~~
19 ~~political party for the period of time required by the Election~~
20 ~~Code]."~~

21 Section 6. Section 1-8-27 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 172, as amended) is amended to read:

23 "1-8-27. PRIMARY ELECTION LAW--DECLARATION OF
24 CANDIDACY--MANNER OF FILING.--~~[Each]~~ A declaration of
25 candidacy, by nominating petition or by preprimary convention

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1 designation, shall be delivered for filing in person by the
2 candidate therein named or by a person acting, by virtue of
3 written authorization, solely on the candidate's behalf. [~~The
4 proper filing officer shall not accept for filing more than one
5 declaration of candidacy from any one individual, except that
6 candidates who seek but fail to receive preprimary convention
7 designation shall file a declaration of candidacy by
8 nomination, according to provisions of the Primary Election
9 Law, to have their names placed on the primary election
10 ballot.]"~~

11 Section 7. Section 1-8-29 NMSA 1978 (being Laws 1973,
12 Chapter 228, Section 3, as amended by Laws 1993, Chapter 55,
13 Section 5 and by Laws 1993, Chapter 314, Section 46 and also by
14 Laws 1993, Chapter 316, Section 46) is amended to read:

15 "1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
16 FORM.--In making a declaration of candidacy by nominating
17 petition or by pre-primary convention designation, the
18 candidate shall submit substantially the following form:

19 "DECLARATION OF CANDIDACY
20 BY PRE-PRIMARY CONVENTION DESIGNATION
21 (OR BY NOMINATING PETITION)

22 I, _____, (candidate's name on certificate
23 of registration) being first duly sworn, say that I reside at
24 _____, as shown by my certificate of registration
25 as a voter of Precinct No. _____ of the county of

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1 _____, State of New Mexico;

2 ~~[I am a member of the _____ party as shown~~
3 ~~by my certificate of registration and I have not changed such~~
4 ~~party affiliation subsequent to the governor's proclamation~~
5 ~~calling the primary in which I seek to be a candidate;]~~

6 I desire to become a candidate for the office of
7 _____ at the primary election to be held on
8 the date set by law for this year, and if the office be that of
9 a member of the legislature or that of a member of the [state
10 ~~board of] public education commission, that I actually reside
11 at the address designated on my certificate of voter
12 registration;~~

13 I will be eligible and legally qualified to hold this
14 office at the beginning of its term;

15 If a candidate for any office for which a nominating
16 petition is required, I am submitting with this statement a
17 nominating petition in the form and manner as prescribed by the
18 Primary Election Law; and

19 I make the foregoing affidavit under oath, knowing that
20 any false statement herein constitutes a felony punishable
21 under the criminal laws of New Mexico.

22 _____
23 (Declarant)

24 _____
25 (Mailing Address)

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(Residence Address)

Subscribed and sworn to before me this ____ day of
_____, [~~19~~] 20 ____.

(Notary Public)

My commission expires:
_____ ". "

Section 8. Section 1-8-31 NMSA 1978 (being Laws 1973,
Chapter 228, Section 5, as amended) is amended to read:

"1-8-31. PRIMARY ELECTION LAW--NOMINATING PETITION--
SIGNATURES TO BE COUNTED.--

A. A person who signs a nominating petition shall
sign only one petition for the same office unless more than one
candidate is to be elected to that office, and in that case a
person may sign not more than the number of nominating
petitions equal to the number of candidates to be elected to
the office.

B. A person who signs a nominating petition shall
indicate [~~his~~] the person's residence as [~~his~~] the person's
address. If the person does not have a residential address,
[~~he~~] the person may provide [~~his~~] the person's mailing address.

C. A signature shall be counted on a nominating
petition unless there is evidence presented that the person
signing:

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1 ~~[(1) was not a registered member of the~~
2 ~~candidate's political party ten days prior to the filing of the~~
3 ~~nominating petition;~~

4 (2)] (1) failed to provide information
5 required by the nominating petition sufficient to determine
6 that the person is a qualified voter of the state, district,
7 county or area to be represented by the office for which the
8 person seeking the nomination is a candidate;

9 ~~[(3)]~~ (2) has signed more than one petition
10 for the same office, except as provided in Subsection A of this
11 section, or has signed one petition more than once; or

12 ~~[(4) is not of the same political party as the~~
13 ~~candidate named in the nominating petition as shown by the~~
14 ~~signer's certificate of registration; or~~

15 (5)] (3) is not the person whose name appears
16 on the nominating petition.

17 D. The procedures set forth in this section shall
18 be used to validate signatures on any petition required by the
19 Election Code ~~[except that Paragraphs (1) and (4) of Subsection~~
20 ~~C of this section shall not apply to petitions filed by~~
21 ~~unaffiliated candidates or petitions filed by candidates of~~
22 ~~minor political parties]."~~

23 Section 9. Section 1-8-33 NMSA 1978 (being Laws 1973,
24 Chapter 228, Section 7, as amended) is amended to read:

25 "1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--

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1 NUMBER OF SIGNATURES REQUIRED.--

2 A. As used in this section, "total vote" means the
3 sum of all votes cast for all of the party's candidates for
4 governor at the last preceding primary election at which the
5 party's candidate for governor was nominated.

6 B. Candidates who seek preprimary convention
7 designation shall file nominating petitions at the time of
8 filing declarations of candidacy. Nominating petitions for
9 those candidates shall be signed by a number of voters equal to
10 at least two percent of the total vote of the [~~candidate's~~]
11 party whose nomination the candidate is seeking in the state or
12 congressional district, or the following number of voters,
13 whichever is greater:

14 (1) for statewide offices, two hundred thirty
15 voters; and

16 (2) for congressional candidates, seventy-
17 seven voters.

18 C. Nominating petitions for candidates for any
19 other office to be voted on at the primary election for which
20 nominating petitions are required shall be signed by a number
21 of voters equal to at least three percent of the total vote of
22 the [~~candidate's~~] party whose nomination the candidate is
23 seeking in the district or division, or the following number of
24 voters, whichever is greater:

25 (1) for metropolitan court and magistrate

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1 courts, ten voters;

2 (2) for the public regulation commission,
3 fifty voters;

4 (3) for the [~~state board of~~] public education
5 commission, twenty-five voters;

6 (4) for state representative, ten voters;

7 (5) for state senator, seventeen voters; and

8 (6) for district attorney and district judge,
9 fifteen voters.

10 D. A candidate who fails to receive the preprimary
11 convention designation that [~~he~~] the candidate sought may
12 collect additional signatures to total at least four percent of
13 the total vote of the [~~candidate's~~] party whose nomination the
14 candidate is seeking in the state or congressional district,
15 whichever applies to the office [~~he~~] the candidate seeks, and
16 file a new declaration of candidacy and nominating petitions
17 for the office for which [~~he~~] the candidate failed to receive a
18 preprimary designation. The declaration of candidacy and
19 nominating petitions shall be filed with the secretary of state
20 either ten days following the date of the preprimary convention
21 at which [~~he~~] the candidate failed to receive the designation
22 or on the date all declarations of candidacy and nominating
23 petitions are due pursuant to the provisions of the Primary
24 Election Law, whichever is later."

25 Section 10. Section 1-8-36.1 NMSA 1978 (being Laws 1981,

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1 Chapter 156, Section 1, as amended) is amended to read:

2 "1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

3 A. Write-in candidates are permitted in the primary
4 election only for the offices of United States representative,
5 members of the legislature, district judges, district
6 attorneys, public regulation commission, [~~state board of~~
7 ~~education~~] public education commission, magistrates and any
8 office voted upon by all voters of the state.

9 B. A person may be a write-in candidate only for
10 nomination [~~by the major political party with which he is~~
11 ~~affiliated as shown by his certificate of registration, and~~
12 ~~such person shall have the qualifications to be a candidate in~~
13 ~~the primary election for the political party for which he is a~~
14 ~~write-in candidate~~] for the office for which the person has the
15 qualifications to be a candidate in the primary election.

16 C. A person desiring to be a write-in candidate for
17 one of the offices listed in Subsection A of this section in
18 the primary election shall file with the proper filing officer
19 a declaration of intent to be a write-in candidate. Such
20 declaration of intent shall be filed before 5:00 p.m. on the
21 second Tuesday in March.

22 D. A write-in vote shall be counted and canvassed
23 only if:

24 (1) the name written in is the name of a
25 declared write-in candidate and shows two initials and last

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1 name; first name, middle initial or name and last name; first
2 and last name; or the full name as it appears on the
3 declaration of intent to be a write-in candidate and
4 misspellings of the above combinations that can be reasonably
5 determined by a majority of the members of the precinct board
6 to identify a declared write-in candidate; and

7 (2) the name is written in the proper slot on
8 the voting machine or on the proper line provided on an
9 absentee ballot or emergency paper ballot for write-in votes
10 for the office for which the candidate has filed a declaration
11 of intent.

12 E. At the time of filing the declaration of intent
13 to be a write-in candidate, the write-in candidate shall be
14 considered a candidate for all purposes and provisions relating
15 to candidates in the Election Code, including the obligations
16 to report pursuant to the Campaign Reporting Act, except that
17 ~~[he shall not be entitled to have his]~~ the write-in candidate's
18 name shall not be printed on the ballot.

19 F. No unopposed write-in candidate shall have ~~[his]~~
20 the nomination certified unless ~~[he]~~ the write-in candidate
21 receives at least the number of write-in votes in the primary
22 election as ~~[he]~~ the write-in candidate would need signatures
23 on a nominating petition pursuant to the requirements set out
24 in Section 1-8-33 NMSA 1978.

25 G. A write-in vote shall be cast by writing in the

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1 name. As used in this section, "write-in" does not include the
2 imprinting of any name by rubber stamp or similar device or the
3 use of preprinted stickers or labels."

4 Section 11. Section 1-10-7 NMSA 1978 (being Laws 1977,
5 Chapter 222, Section 30, as amended) is amended to read:

6 "1-10-7. BALLOTS--NAME SHALL APPEAR BUT ONCE.--Whenever a
7 person is, with the person's knowledge and consent, a candidate
8 for any office, the person's name shall be printed on the
9 ballot once for each party that has nominated the person.

10 Except in the case of a candidate for United States [~~senate~~]
11 senator or United States representative who is also a candidate
12 for president or vice president of the United States, [~~no~~] a
13 candidate's name shall appear more than once on the ballot.

14 [~~Whenever a person is, with his knowledge and consent, a~~
15 ~~candidate at any nominating convention or primary for~~
16 ~~nomination as the candidate of any political party for any~~
17 ~~office to be voted on at the election to be held next after~~
18 ~~such convention or primary, his name shall not be printed on~~
19 ~~the ballot at such election except in the column under the~~
20 ~~party name and emblem of the party designated on his~~
21 ~~declaration of candidacy or statement of candidacy for~~
22 ~~convention designation.]"~~

23 Section 12. A new section of Chapter 1, Article 12 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] CONDUCT OF ELECTION--COUNTING OF

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1 BALLOTS.--For purposes of determining which candidate has been
2 elected, votes cast for the same candidate under multiple party
3 names shall be totaled. For all other purposes, including
4 party qualification, votes cast under different party names
5 shall be counted and recorded separately. A voter who attempts
6 to vote for the same candidate under multiple party lines shall
7 have the voter's vote counted as if the voter had voted for
8 that candidate on a line without any party name; provided that
9 a vote for the same candidate under multiple party names shall
10 not be treated as an overvote."

11 Section 13. REPEAL.--Section 1-8-19 NMSA 1978 (being Laws
12 1975, Chapter 255, Section 106, as amended) is repealed.

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